## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:08CR243
Plaintiff,	)	
vs.	)	TENTATIVE FINDINGS
ROSA YNZUNZA,	)	
Defendant.	)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 36, 37). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

## ¶ 38 - Drug Quantity

Both parties object to the drug quantity and base offense level in ¶ 38. The plea agreement provides that the parties agree that the Defendant should be held responsible for more than 500 grams but less than 1.5 kilograms of a mixture or substance containing methamphetamine. The PSR attributes the Defendant with at least 10,000 but less than 30,000 kilograms of marijuana. The Court's tentative findings are that the plea agreement should be upheld.

## ¶ 39 - Safety Valve

The Defendant objects to the lack of a downward adjustment in ¶ 39 for the safety valve, U.S.S.G. § 2D1.1(b)(11). This issue will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence to show that the Defendant has complied with the criteria set out in U.S.S.G. § 5C1.2(a)(1)-(5).

IT IS ORDERED:

1. The Court's tentative findings are that the following objections (drug quantity;

base offense level) are granted:

the government's objections (Filing No. 37); a.

b. the Defendant's objection to ¶ 38 (Filing No. 36);

2. The Defendant's objection to ¶ 39 (safety valve) (Filing No. 36) will be heard

at sentencing;

3. Otherwise the Court's tentative findings are that the Presentence

Investigation Report is correct in all respects;

4. If any party wishes to challenge these tentative findings, the party shall

immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are

required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and

an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order,

my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings

shall be resolved at sentencing.

DATED this 17<sup>th</sup> day of November, 2008.

BY THE COURT:

s/Laurie Smith Camp

United States District Judge